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17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 Cung Le, Nathan Quarry, Jon Fitch, Brandon
20 Vera, Luis Javier Vazquez, and Kyle
21 Kingsbury on behalf of themselves and all
22 others similarly situated,

23 Plaintiffs,

24 vs.

25 Zuffa, LLC, d/b/a Ultimate Fighting
26 Championship and UFC,

27 Defendant.

28 Case No.: 2:15-cv-01045 RFB-(PAL)

**STIPULATION AND [PROPOSED]
ORDER CONCERNING EXPERT
DISCOVERY**

The parties through their respective counsel of record stipulate to the following regarding the scope of expert discovery in the above-captioned matters and all other matters subsequently consolidated with them (collectively, the "Actions"), subject to approval by the Court.

1. This Stipulation and Order Concerning Testifying Expert Discovery ("Stipulation") does not set or alter the time for any disclosure required by Federal Rule of Civil Procedure 26(a)(2)(B) or any of the deadlines set forth in the Discovery Plan and Scheduling Order (ECF No. 311).

1 2. To the extent that this Stipulation imposes limitations on discovery that would otherwise
 2 be available under the Federal Rules of Civil Procedure or this Court's standing orders, the parties have
 3 agreed to those limitations to increase the efficiency of their dealings with testifying experts and to
 4 minimize discovery disputes regarding testifying experts. Neither the terms of this Stipulation nor the
 5 parties' agreement to them shall be considered an admission by any person that any of the information
 6 restricted from discovery by this Stipulation would otherwise be discoverable or admissible.

7 3. For purposes of the Action, Rule 26(a)(2)(B)(ii) is modified to read: "the facts, data and
 8 other information relied on by the witness in forming them."

9 4. Except as provided in paragraphs 6 and 7 below, the following types of information
 10 shall *not* be the subject of any form of discovery and the parties shall not be obligated to preserve such
 11 information in any form or include such information on any privilege log:

- 12 a. the content of written and oral communications among and between:
 - 13 i. counsel and the expert and/or the expert's staff and/or supporting firms;
 - 14 ii. counsel and any non-testifying expert consultant and/or the consultant's
 15 staff;
 - 16 iii. the expert and other experts and/or other non-testifying expert
 17 consultants;
 - 18 iv. experts and their staff and/or supporting firms;
 - 19 v. non-testifying expert consultants and their staffs;
 - 20 vi. the respective staffs and/or supporting firms of experts or non-testifying
 21 expert consultants and the staffs and/or supporting firms of other experts
 22 or non-testifying expert consultants.

23 b. notes, drafts, written communications, preliminary or intermediate calculations,
 24 computations or other data runs, or other types of preliminary work created by, for, or at the
 25 direction of a testifying expert, including drafts or parts of or whole Fed. R. Civ. P. 26(a)(2)(B)
 26 expert reports, affidavits, exhibits or declarations.

27 5. No party or their experts are obligated to preserve or produce budgets, invoices, bills,

1 receipts or time records concerning testifying or non-testifying expert witnesses or consultants, their
2 staff, assistants, colleagues, or associates, or their companies or organizations.

3 6. The limitations contained in paragraphs 4 and 5 above shall not apply to any
4 communications, documents, data sets, data runs, calculations, computations or other forms of
5 information or work upon which a testifying expert relies as a basis for any of his or her opinions or
6 reports.

7 7. Notwithstanding the limitations contained in paragraphs 4 and 5 above, an expert may
8 be asked: (a) to identify and generally describe investigations or modeling (including any regression
9 analyses) that the expert attempted but rejected, (b) to describe the reasons for rejecting any such
10 investigations or modeling, (c) to respond to reasonable questions regarding the hourly rates of the
11 expert and his or her staff, the amount of time an expert or that expert's staff has spent on the expert's
12 report and associated work, and the amount of money billed for the report and associated work.

13 8. Within three business days of any party serving any expert report and/or expert
14 declaration pursuant to Fed. R. Civ. P. 26(a)(2)(B) or otherwise, the party or parties proffering the
15 expert witness shall produce: the data or other information relied upon by the expert witness in forming
16 the expert witness's opinions; any exhibits that will be used to summarize or support the expert
17 witness's opinions; any work product (including but not limited to, analyses, spreadsheets, graphs, and
18 charts) relied upon by the expert witness that is based on the output from any computer programs that
19 are produced; the expert witness's qualifications, including a list of all publications authored in the
20 previous 10 years; a list of all other cases in which, during the previous four years, the expert witness
21 has testified as an expert at trial or by deposition; and a statement of the hourly rate to be paid for the
22 expert witness's time in the case. "Data or other information relied upon" shall be deemed to include,
23 but will not be limited to, underlying data, spreadsheets, computerized regression analysis and/or other
24 underlying reports and schedules sufficient to reconstruct the work, calculations, and/or analyses upon
25 which the expert witness is relying for his or her opinions.

26 9. The information required by paragraph 8 above to be produced shall be produced
27 electronically (via email, disc or FTP site) where feasible. Data, statistical analyses, or other
28 information (including any calculation or exhibit) upon which an expert relies for any of his or her

1 opinion(s) in this matter shall be provided in machine readable format, including any data that has been
2 cleaned, reformatted, or modified in any way from the form in which it may have been provided to the
3 expert. All other documents, data, and other information relied upon shall be provided in a format as
4 agreed to by the parties, along with any software and instructions required to read them, but no party
5 need produce computer software that is reasonably and commercially available (*e.g.*, Microsoft Word,
6 Excel). Documents that are publicly available need not be produced absent specific request if they are
7 identified with sufficient specificity to allow the opposing side to locate and obtain the document.
8 Documents that have previously been produced during discovery need not be produced if they are
9 identified by Bates number.

10. Paragraph 8 above is not intended to limit the ability of any party to prepare and use
11 demonstrative exhibits, including demonstrative exhibits that may relate to an expert's testimony,
12 during the course of any hearing or trial. The admissibility of any such demonstrative exhibits shall be
13 subject to the Federal Rules of Evidence, the Rules of Civil Procedure, and this Court's Local Rules,
14 unless otherwise provided by order of the Court.

15. No subpoenas (for depositions or documents) need be served on any testifying expert
16 from whom a report or declaration is provided. Instead, the party proffering such expert will (a) be
17 responsible for producing all materials and information relied on by the expert, and (b) make the expert
18 available for deposition at a time mutually agreed to by the parties and consistent with the Court's
19 scheduling orders.

20. Nothing in this Stipulation shall permit a party or a testifying expert to withhold any
21 proposition, fact, belief or other data, information or material on which the expert relies in support of
22 her or his opinion(s) in this matter.

23. The parties agree to comply with this Stipulation pending the Court's approval.

24 **IT IS SO ORDERED:**

25 DATED:

26 Hon. Peggy A. Leen
27 UNITED STATES MAGISTRATE JUDGE
28

1 Dated: November 3, 2016

BOIES, SCHILLER & FLEXNER LLP

3 By: /s/ Nicholas A. Widnell

4 Nicholas A. Widnell

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1 Dated: November 3, 2016

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2016, a true and correct copy of **STIPULATION AND [PROPOSED] ORDER CONCERNING EXPERT DISCOVERY** was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By /s/ Christie Rehfeld
Christie Rehfeld, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
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